

Spoken
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Testimony of
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My name is Karen Hobert Flynn and I am the Senior Vice President for Strategy and Programs for the national organization of Common Cause and former Chair and Executive Director of Common Cause in Connecticut.

Common Cause in Connecticut is a nonpartisan, nonprofit citizen lobby that works to improve the way Connecticut's government operates. Common Cause has worked for four decades in Connecticut and worked with the General Assembly and many governors to pass strong freedom of information laws, election reforms that opens up our electoral system to broader participation, campaign finance and disclosure reforms, and common sense ethics reforms. We have more than 400,000 members around the country and 35 state chapters. We have approximately 7200 members and activists in Connecticut.

I am here to testify about the need for strong disclosure reform in Connecticut, and we hope that Proposed Bill 5, introduced by Senate President Don Williams becomes a strong disclosure reform vehicle that can shed the light of day on the dark money spent by special interests that target candidates with negative ads and mailers. We hope this year, the General Assembly can pass a strong disclosure bill and that the Governor can sign into law instead of vetoing it.

Malloy's Consolidation Plans Eviscerate Watchdog's Independence

Before getting into the need for a strong disclosure bill – I feel forced to mention that if we do pass a strong disclosure bill, we need strong, independent watchdog agencies to enforce any laws that the legislature passes. Governor Malloy's latest plan to once again try to consolidate the watchdog agencies will eliminate their independence and make them accountable to him and undermines the integrity of all the work those agencies do. His plan to grab ten attorneys from the State Elections Enforcement Commission, the Office of State Ethics, and Freedom of Information Commission to create a new Office of Hearings that will be accountable to the Governor's appointee, David Guay – will weaken those agencies ability to do the work they need to investigate problems that crop up. In addition, the governor plans to remove 5 IT people, 2 fiscal staff and 3 investigators from elections enforcement, making it impossible for them to make grants for the Citizens Election program.

Two years ago, Governor Malloy proposed consolidation to supposedly save money. This proposal doesn't even save money – it simply eviscerates these agencies. The budget he submitted violates state law that was put in place to protect the watchdogs from a governor who may want to retaliate against these agencies for investigations, or other actions. I cannot possibly imagine what Governor Malloy thinks he is doing. Senate President Don Williams, Speaker Brendan Sharkey and members of this General Assembly cannot allow this to happen. Governor Malloy's plans make a complete mockery of all the work we have done over decades to put some of the strongest campaign and ethics reforms in the country in place here. Without independent watchdogs, Connecticut reform laws aren't worth the paper they are printed on.

I am hopeful that we can quickly move beyond this deeply flawed proposal, so that we can tackle the very real disclosure problems we face in Connecticut – problems that undermine our Citizens' Election program and the transparency of our electoral process.

Disclosure of all donors

Common Cause supported the very strong disclosure bill drafted by this committee and passed into law in May of 2010, in the wake of *Citizens United* decision. The challenge was that it was done quickly, before the 2010 elections witnessed a huge explosion of secret money being spent at the state and federal level. In addition, the implications of the *SpeechNow* decision were not yet known, because that decision said that the existing \$5000 per year limit on the amount an individual could contribute to a third party group to make independent expenditures is unconstitutional.

Connecticut's law currently requires timely disclosure of electioneering communications and independent expenditures by any entity, and requires a disclaimer featuring the CEO and listing of the top five donors. But we have learned that there is still much unknown to the public about the vast amounts of money spent by secret donors and front groups and even our current law has some weaknesses and lacks the teeth to force compliance with outside spenders who file late or don't disclose the information they should.

This year the 2012 elections cost \$7 billion at the federal level. The Federal Election Commission estimates that candidates spent \$3.2 billion and parties spent \$2 billion. In the wake of *Citizens United* and *SpeechNow*, outside spending skyrocketed, going from \$294 million in 2010 to more than \$2.1 billion in 2012, with a third of that money undisclosed. Over a thousand Super PACs spent upwards of \$950 million advocating for or against candidates. The Federal Election Commission's non-existent enforcement of federal rules governing coordination made a mockery of the notion of "independent expenditures" and allowed Super PACs to operate as shadow campaigns – often staffed by former associates of the presidential campaigns, with unlimited amounts of money they could receive on behalf of a presidential candidate. The FEC processed more than 11 million pages of documents in the 2012 calendar year alone.

John Nichols and Bob McChesney, in their new book *Dollarocracy* found that \$4 billion more was spent on ballot initiatives and at the state and local level. In Connecticut, nearly

\$600,000 was spent by outside groups targeting state legislative candidates. One group, called "Voters for Good Government" supported six Republican state candidates and targeted four Democratic state senate candidates and one Democratic house candidate, spending approximately \$280,000 in ads and mailers. One challenge is that outside spenders are not required to disclose details of how much they are spending against or for each candidate. For example, House candidate and incumbent Vickie Nardello was the victim of last minute negative mailers and we don't know how much was spent against her. The SEEC Filing shows that \$127,925 was spent on candidates and Representative Nardello was included in that list. They listed expenditures of \$49,301; \$67,580, and \$11,045 made on Senators Len Suzio and Steve Cassano, and then list Senator Andrew Maynard, Senate candidate Theresa Madonna, House candidates Jim Crawford, Vicki Nardello, Senators Ed Meyer, and John Kissel in an addendum for "independent expenditures made by entity, addendum" with no dollar amounts listed. Allowing entities to hide these details was certainly not the intent of the disclosure law passed in 2010 and moving forward, this kind of reporting must be strengthened.

Other problems with reporting include incomplete submissions – the Roger Sherman Liberty Center did not disclose their top five donors, and the Great New England Schools group filed their independent expenditure reports late.

Reforms Needed and Suggestions for Strengthening Provisions

We are pleased to see the introduction of S.B. 5, An Act Concerning Changes to Campaign Finance Laws and other Election Laws. We believe this is a very good start to strengthening our disclosure laws. I am here to offer what I hope are constructive comments to strengthen what I believe the bill intends, and to encourage that you add some provisions that were part of HB House Bill 5556 that passed the House and Senate last year, but was vetoed by the Governor.

First, we believe it is essential to have prompt public disclosure of campaign-related spending by corporations and other covered organizations. S.B. 5 does that by digging deeper than our current law, requiring organizations that engage in electioneering communications and independent expenditures to identify all the sources of the funds they use for campaign spending, including any donors who gave in the aggregate \$1,000. This essential provision is necessary in order to ensure that public disclosure of campaign-related spending actually works and that the money used to influence Connecticut campaigns cannot be hidden behind shadowy front groups used to mask the true sources of funds. The bill also requires disclosure of transfers, the key piece that ensures that individual or corporate donors can't hide the true source of the money for independent expenditures by transferring funds through conduits, intermediaries or front groups.

501(c)(3)s

The bill needs to exempt 501(c)(3) organizations from independent expenditure and electioneering communication disclosure, because they are charitable and educational organizations and are only allowed to undertake limited lobbying activities and no political campaign activity at all.

Covered Transfers

As drafted, the definition of “covered transfer” is likely to be ineffective because it is under-inclusive. This definition includes a payment of funds “by any person to another person.” By comparison, H.R. 148 (the version of the Van Hollen bill introduced in the 113th Congress) includes a payment of funds “by a covered organization to another person.” A “covered organization” is defined in that bill to include corporations, labor organizations, section 501(c) groups and section 527 groups. It is important to limit the definition of “covered transfers” to apply only to payments by “covered organizations” (or some similarly limited category of transferors) because otherwise you will trigger source disclosure obligations by any individual who gives money to a group making campaign-related disbursements. The definition of “covered transfer” is a term used to define which entities should be subject to a donor disclosure filing requirement—*i.e.*, those entities that make a “covered transfer”—so the definition should not apply to any individual that gives money to another person, but rather to entities that give money under certain circumstances to another person.

In addition, this definition covers only transfers to “a recipient who uses such funds” to make campaign related disbursements. As a practical matter, there is no way to determine which funds are used to make campaign disbursements, and recipients will just deny they used the “transferred” funds to make disbursements. Thus, by this definition, it is likely that no transfers will be covered. Further, the definition is confusing because it is not clear what is meant by the “initial” transfer.

I am attaching language from HR 148, the Van Hollen bill introduced in the 113th Congress to provide strong “covered transfer” language.

Definition of Expenditure

One of the biggest challenges for the public and for disclosure is that this bill does not clearly and explicitly define electioneering communications as part of a category of communications that needs to be disclosed in this bill. Instead, electioneering communications are part of the general definition of expenditure. That means that the bill technically requires disclosure of electioneering expenditures and independent expenditures, but it means we don't identify electioneering communications clearly, the way they do at the federal level and the way every other state that requires such disclosure does. So when groups give “grades” for disclosure, we get a lower grade for not requiring disclosure of electioneering communications. When we see State Election Enforcement Commission reports, these expenditures are not disclosed and identified as such. And groups may not be clear that these kinds of expenditures need to be disclosed 90 days before an election.

Under federal law, “electioneering communications” refers to is any broadcast, cable or satellite communication that fulfills **each** of the following conditions: 1). The communication refers to a clearly identified candidate for federal office; 2). The communication is publicly distributed shortly before an election for the office that candidate is seeking; and 3). The

communication is targeted to the relevant electorate. Many states have passed laws broadening that definition to include non-broadcast communications including, among other media like billboards, pamphlets, mass direct mail, and paid print advertising—where such communications are targeted at the relevant election, appear close in time to an election, clearly identify a candidate, and cost more than a specified threshold.

We urge the committee to explicitly define electioneering communications and not fold the definition into the definition of expenditures, and then integrate throughout the bill that disclosure applies to both independent expenditures and electioneering communications within 90 days of an election.

And as Craig Holman points out in Section 10, which requires businesses to disclose their expenditures to their shareholders, the bill does not include disclosure of electioneering communications.

In Sec. 9-601b(a)(2), the definition of “expenditure” is confusing in terms of how it defines the time frame, is overly broad in some parts, and makes a dangerous exclusion for communications “made for the purposes of influencing legislation or administrative action” that could render the entire provision meaningless unless it is more narrowly tailored to provide a clear definition of what constitutes a lobbying expenditure. The draft language is as follows:

Any [advertisement] communication that (A) refers to one or more clearly identified candidates, (B) is broadcast by radio, [or] television, [other than on a public access channel] satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by mail, and (C) is broadcast or appears [during the ninety-day period preceding the date of a primary or an election, other than a commercial advertisement that refers to an owner, director or officer of a business entity who is also a candidate and that had previously been broadcast or appeared when the owner, director or officer was not a candidate] on or after January first of the year during which there will be an election for the office that the candidate or candidates are seeking, but such communication does not include speech or expression made prior to the ninety-day period preceding the date of a primary or an election at which such clearly identified candidate or candidates are seeking nomination or election to public office or position, that is made for the purpose of influencing any legislative or administrative action, as defined in section 1-91, by state government or a political subdivision of state government;

This section includes both payments made “for the purpose of influencing” an election (the typical definition of expenditures) and also all communications that refer to a candidate and made in the period from 90 days prior to the primary until the general election (the typical definition of “electioneering communication”).

The time frame here is confusing. It says any communication made after January 1 of the election year but then excludes any “speech or expression” made more than 90 days prior to the primary or general election, so it seems like it is just a 90 day pre-election period, and it

would be simpler to say that. Furthermore, the definition doesn't seem to stop at the date of the general election but to cover any communication that refers to a candidate made in the election year, including after the election. That seems to be an unintentional drafting error, and is probably not intended and should be fixed.

We like that the definition attempts to cover more than broadcast ads that refer to a candidate, because that reflects the ways in which groups target candidates. But because the definition includes all forms of communications, it is extremely broad. If you send a letter to your son that mentions a candidate, you have made an "expenditure." Because the definition also includes all communications over the Internet, the same is true for an email. We think it would be cleaner to only cover internet communications that are paid ads on another person's website, and not capture email, social media and websites that happen to mention a candidate. In terms of the mail issue, it might be better to define that as mass mailings instead of any mailing.

Segregated Accounts

An important provision in this bill is that it provides options to donors in terms of disclosure. If an entity engages in independent expenditures and sets up a separate segregated fund for political purposes, only those donors are subject to the disclosure requirement. In addition, donors are empowered because any donor can restrict the donated funds from being used for campaign-related expenditures, and if they do so, the donor will not be subject to any disclosure requirement.

The problem with this provision, under Sec. 9-612(e)(6)(A) is that groups making independent expenditures out of a segregated account are only required to disclose donations made to the account in the election year. There should be a longer disclosure look-back, or else groups will raise money into the account in the prior non-election year and thereby defeat disclosure. I encourage the committee to look at how this issue is dealt with in the attached Van Hollen bill.

Penalties

We are disappointed to see that the penalties for failure to report expenditures are substantially weaker than last year's bill. Common Cause believes it is critical to create penalties that are real and will help ensure compliance with the law. Connecticut's disclosure law was blatantly ignored by the Democratic and Republican Governor's Association in 2010. The Democratic Governors Association reported spending **\$1,782,640.60** on Independent Expenditures and the Republican Governors Association reported spending **\$1,612,236.97**, although they filed no disclosure reports and did not list their top five donors.

We support the provisions of this bill that put in place fines for knowingly and willfully violations of this law that would be equal to 300% of the amount of the expenditure, which will provide a real incentive to abide by the law.

Text from SB 5:

5) (A) If an individual, entity or committee fails to file a report required under subdivision (2) of this subsection for an independent expenditure or expenditures made or obligated to be made more than ninety days before the day of a primary or election, the person shall be subject to a civil penalty, imposed by the State Elections Enforcement Commission, of not more than five thousand dollars. If an individual, entity or committee fails to file a report required under subdivision (2) of this subsection for an independent expenditure or expenditures made or obligated to be made ninety days or less before the day of a primary or election, such individual, entity or committee shall be subject to a civil penalty, imposed by the State Elections Enforcement Commission, of not more than ten thousand dollars. (B) If any such failure is knowing and willful, the person responsible for the failure shall also be fined not more than five thousand dollars or imprisoned not more than five years, or both.

Shareholder Protections

Common Cause strongly supports the common sense protections for shareholder disclosure and empowerment, modeled after how the UK's laws work. Current law does not require corporations to disclose to shareholders whether corporate funds are being used in politics and shareholders have no opportunity to consent to the political use of corporate funds. This law would require corporations to require managers to report corporate political spending directly to shareholders.

Tighten coordination rules

We strongly support the bill's coordination rules that will ensure that independent expenditures remain truly independent by clarifying what constitutes coordination.

We would make one suggestion to ensure that the "common employee" provision, under Sec. 4. Section 9-601c (10) is not overly broad. The "common employee" provision typically is narrowed to cover campaign-related employees, such as anyone providing services in support of campaign activities such as advertising, message, strategy, policy, polling, allocation of resources, fundraising and campaign operations, but would not include employees who provide, *e.g.*, accounting services, custodial services and other non-campaign activities. By comparison, if you look at Sec. 4. Section 9-601c (11), the campaign activities are enumerated, which limits the scope of services to those that are campaign related:

(11) An expenditure made by a person or an entity on or after January first in the year of an election in which a candidate is seeking office that benefits such candidate when such person or entity making the expenditure has hired a campaign-related vendor that has been hired by such candidate during the same election cycle. For purposes of this subdivision, campaign-related vendor includes, but is not limited to, a vendor that provides the following services: Polling, mail design, mail strategy, political strategy, general campaign advice or telephone banking.

Disclaimer provisions

Common Cause supports this legislation's "stand by your ad" provisions. Connecticut's law already has attribution provisions that require all entities that engage in independent expenditures or electioneering communications to feature the top five contributors in the ad. This bill will also require a link to a website that lists **all donors** and their names and addresses.

Other Needed Reforms

We believe that we need to go much further than disclosure reform and also use this opportunity to strengthen the ability of candidates who participate in the Citizens' Election Program to raise additional resources if they run in competitive races or they are subjected to negative attack ads.

We believe that there are many ways to amend our Citizens' Election program to provide additional grants for participating candidates, or allow candidates to raise small donor contributions to help combat high spending opponents or significant independent expenditures. We would be open to models that look at providing multiple matches to small donor contributions as a way to provide candidates who face competitive elections with extra resources – either by allowing candidates to raise that money, in addition to the grant they receive, or allow a caucus PAC to raise donations up to certain limits.

Conclusion

We would like to thank the committee for addressing the critically important campaign finance issues of disclosure post Citizens United. ***We believe that the disclosure provisions in this bill are exceptionally strong and important.*** We would like to continue to explore options to strengthen the public financing system to help candidates get the resources they need to deal with independent expenditures that does not allow huge special interest money back into the system. Thank you for the opportunity to present this testimony today.